

STATE OF WISCONSIN
Department of Commerce

In the Matter of the PECFA Appeal of

John Duffy
Duffy Bros. Inc.
PO Box 250
Columbus WI 53925

PECFAClaim #53925-2005-67
Hearing #02-168

FINAL DECISION

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition for hearing filed April 23, 2002, under §101.02(6)(e), Wis. Stats., and §Comm 47.53, Wis. Adm. Code, to review a decision by the Department of Commerce, a hearing was commenced on February 12, 2003, at 201 West Washington Street, Madison, Wisconsin.

The issue for determination is whether the Department's decision dated 3/25/02 was incorrect with regard to the items identified in Petitioner's Appeal filed on 4/23/02.

There appeared in this matter the following persons:

PARTIES IN INTEREST:

John Duffy
Duffy Bros. Inc.
PO Box 250
Columbus WI 53925

By: Carolyn A. Sullivan
Reinhart Boerner
PO Box 2965
Milwaukee WI 53201-2965

Mark Maten
Envirogen, Inc.
4100 Quakerbridge Road
Lawrenceville, NJ 08648

Department of Commerce
PECFA Bureau
201 West Washington Avenue
PO Box 7838
Madison WI 53707-7838

By: John A. Kisiel
Department of Commerce
201 W. Washington Ave., Rm 322A
PO Box 7838
Madison WI 53707-7838

The authority to issue a decision in this matter has been delegated to the undersigned by order of the Secretary dated July 2, 2002. The matter now being ready for decision, I hereby issue the following:

FINDINGS OF FACT

The Appellant challenges the Department's decision to deny reimbursements of certain costs incurred by the Appellant and identified on Envirogen Invoice No. 980410-21 dated 7/02/02. These costs were incurred after the Appellant, on 4/13/01, received a Conditional Case Closure Approval Letter from the Department dated 4/12/01. According to testimony at the hearing, the costs reflected on this invoice were associated with services Envirogen provided to satisfy the two final closure requirements specified in this letter. The first requirement involved the recording of a deed restriction. The second involved a public notice for this site.

DISCUSSION AND CONCLUSIONS OF LAW

The Appellant claims that the Department improperly denied reimbursement for the costs reflected on the Envirogen Invoice in issue. At the hearing, the appellant argued these costs were described as consultant costs associated with the final site closure of the Appellant's property, necessarily incurred pursuant to the Department's final directives for site closure.

The Department's position is that these costs associated with final closure are not integral to remedial action, pursuant to Comm 47.30(2)(a)(15), and as publicized in PECFA Update #15 dated March 2001. Accordingly, the Department argues that any costs associated with meeting these final closure requirements also should be designated as ones that come within the exclusion of reimbursable costs designated in Comm 47.30(2)(a)(15).

DECISION

Because the invoice amounts are attributable to costs the Department has determined to be ineligible for reimbursement purposes, the Appellant has failed to persuade this Judge that such costs should be characterized as ones other than the kind excluded in Comm 47.30(2)(a)(15). Judgement is rendered in favor of the Department.

Dated: 2/13/03



Mari A. Samaras-White
Administrative Law Judge
Department of Commerce
PO Box 7970
Madison WI 53707-7970

copies to:

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REQUEST FOR REHEARING/JUDICIAL REVIEW

Hearing #02-168
Commerce # 53925-2005-67

Request for New Hearing

Petitions for new hearings must be received no later than 20 days after the mailing date of this hearing decision.

If, after you receive the decision, you believe it was based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. **To ask for a new hearing**, send or deliver a written request to Rehearing Request, Department of Commerce, Office of Legal Counsel, 201 W. Washington Avenue, 6th Floor, PO Box 7970, Madison, WI 53707-7970. Rehearing requests may also be filed by fax at the following number: (608) 266-3447. Faxed rehearing requests received after 4:30 p.m. on a business day will be filed effective the next business day.

Your request must explain why you believe the hearing examiner's decision is wrong. If you have new evidence to submit, you must describe your new evidence and explain why you did not have it at your first hearing. If you do not explain how your request for a new

hearing is based on either a mistake of fact or law or on the discovery of new evidence which could not have previously been obtained through due diligence on your part, your request will be denied.

The petition for new hearing must also be sent or faxed to all other parties named in this decision as "PARTIES IN INTEREST." **Late requests cannot be granted.** The process for asking for a new hearing is in Sec. 227.49 of the state statutes

Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the mailing date of this hearing decision as indicated below (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Secretary, Department of Commerce, Office of the Secretary, 201 W. Washington Avenue, 6th Floor, PO Box 7970, Madison, WI 53707-7970.

The petition for judicial review must also be served on all other parties named as "PARTIES IN INTEREST". **Late requests cannot be granted.** The process for judicial review is described in Sec. 227.53 of the statutes.

PARTIES IN INTEREST:

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John A. Kisiel
Assistant Legal Counsel
Office of the Secretary
Department of Commerce

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| Date Mailed: | <u>2/13/03</u> |
| Mailed By: | <u>Laura Pleasant</u> |